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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 09/963,705 | 09/27/2001 | Kiyohito Yoshihara | 011153 | 1626 |
| 38834 | 7590 | 04/05/2006 | EXAMINER | |
| WESTERMAN, HATTORI, DANIELS & ADRIAN, LLP 1250 CONNECTICUT AVENUE, NW SUITE 700 WASHINGTON, DC 20036 | | | HAMZA, FARUK | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 2155 | |

DATE MAILED: 04/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | |
|---|-------------------------|------------------|
| Advisory Action Before the Filing of an Appeal Brief | Application No. | Applicant(s) |
| | 09/963,705 | YOSHIHARA ET AL. |
| | Examiner Faruk Hamza | Art Unit 2155 |

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 23 December 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) The period for reply expires _____ months from the mailing date of the final rejection.
- b) The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because

- (a) They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) They raise the issue of new matter (see NOTE below);
- (c) They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. Applicant's reply has overcome the following rejection(s): _____.

6. Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. For purposes of appeal, the proposed amendment(s): a) will not be entered, or b) will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: None.

Claim(s) objected to: None.

Claim(s) rejected: 1-11.

Claim(s) withdrawn from consideration: None.

AFFIDAVIT OR OTHER EVIDENCE

8. The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

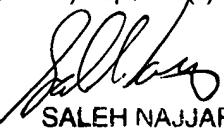
10. The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.

12. Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____

13. Other: _____


SALEH NAJJAR
SUPERVISORY PATENT EXAMINER

Continuation of 11. does NOT place the application in condition for allowance because: Applicant's arguments been fully considered but they are not persuasive. In the remarks applicant argues in substance that; A) Bearden does not teach means for inputting policy information, evaluation information, adjustment information and distributing information. B) Bearden does not teach means for enforcing policy information, evaluating policy and dynamically adjusting policy. C) Bearden does not teach managed device.

In response to claim A, Bearden teaches a system and method for managing policies to specify QOS goals on a network (see abstract). Bearden teaches a management server "management device" that has a GUI "policy information input means" that is used to specify a service, client and QOS parameters (see col. 1 lines 54-60). The management server also uses the GUI "policy evaluation information input means" to input a range for values for QOS metrics that is used to evaluate the state of the network (see col. 1 lines 59-63). The management server also has a sub-process "policy adjustment means" that determines whether goals or rules should be adjusted to meet certain criteria (see col. 5 lines 9-18). Bearden also teaches the server monitors the state of the network to determine the delivered QOS for the selected goal. If the delivered QOS meets the selected QOS goal, then a report is sent to the administrator machine (see col. 5 lines 45-67). Therefore the server "distribution means" sends a policy report "policy evaluation" to the administrator machine "managed device".

In response to claim B, Bearden teaches the system includes management server and QOS configurable servers "managed devices" that store QOS goals and that are used to be compared to delivered QOS goals and adjusting the allocation of parameters according to the results of the comparison (see col. 2 lines 43-col. 3 lines 6); therefore Bearden teaches a policy enforcing means and a policy evaluation means by evaluating the delivered QOS and determining whether the delivered QOS is equals to the QOS goal. In addition, Bearden teaches the management server and the QOS configurable servers also has a sub-process "policy adjustment means" that determines whether goals or rules should be adjusted to meet certain criteria and allocating or de-allocating resources to meet the desired criteria (see col. 5 lines 9-18). Therefore Bearden teaches a policy adjustment means to adjust a policy.

In response to C) In response to applicant's arguments, the recitation "managed device" has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).